

PEST INFESTATION AND PLANT DISEASE PENALTIES

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House Bill 4560 as introduced
Sponsor: Rep. Tim Moore

House Bill 4567 (Substitute H-1)
Sponsor: Rep. Darwin Booher

House Bill 4562 as introduced
Sponsor: Rep. Gary Newell

House Bill 4613 as introduced
Sponsor: Rep. Bill Caul

Committee: Agriculture
Revised First Analysis (4-20-05)

BRIEF SUMMARY: House Bills 4560, 4562, and 4567 would establish penalties related to violating quarantines and other provisions related to plant infestations and plant diseases. House Bill 4613 would provide the Department of Agriculture with the authority to issue state civil infractions.

FISCAL IMPACT: House Bills 4560, 4562, and 4567 would have an indeterminate fiscal impact on the state and local units of government, depending on how they affected the numbers of people held responsible for state civil infractions, found guilty of misdemeanors, or found guilty of felonies. Additionally, House Bill 4613 would have an indeterminate fiscal impact on the state.

THE APPARENT PROBLEM:

In June 2002, the Emerald Ash Borer (EAB) was discovered in six Southeast Michigan counties. The EAB is a small, dark green beetle that burrows into ash trees, leaving distinctive S-shaped larval feeding tunnels under the bark and D-shaped exit holes on the branches and trunks. The appearance of the EAB does not become evident until the tree shows signs of infestation, including dying branches, declining canopies, and overall fragility.

The presence of the EAB has been devastating to municipalities, property owners, and nurseries, as they must destroy their ash trees in order to stem the spread of EAB to the state's 700 million ash trees. Thus far, more than six million ash trees in communities throughout the state have been destroyed, at a substantial cost.

Following the detection of the EAB in the summer of 2002, the Department of Agriculture established a quarantine area of six southeastern counties – Livingston, Macomb, Monroe, Oakland, Washtenaw, and Wayne. In August 2003, the quarantine was expanded to include, as a buffer zone around the original quarantine areas, the surrounding seven counties - Shiawassee, Jackson, Ingham, Lenawee, Genesee, Lapeer, and St. Clair. Last year, the quarantine area was expanded to include the pockets of outlying areas where the EAB has been found, including portions of Berrien, Calhoun, Eaton, Kent, and Saginaw counties. Finally, in late December 2004, the Department of

Agriculture again expanded the quarantine and further restricted the movement of certain materials to stem the further spread of EAB. The quarantine now includes all Branch, Calhoun, Clinton, Eaton, Gratiot, Hillsdale, and Saginaw counties.

The quarantine restricts the movement of entire ash trees, ash limbs and branches, ash logs or untreated ash lumber with attached bark, ash chips, certain articles that may foster the artificial spread of EAB, and cut firewood of any deciduous species originating from areas under the quarantine. The restriction on the movement of these regulated materials is particularly important in stopping the artificial spread of EAB into areas outside of the quarantine zone.

The Department of Agriculture's quarantine regulation, issued under the authority of Public Act 72 of 1945, provides that any violation of the quarantine is a misdemeanor punishable by a fine between \$25 and \$100 and/or imprisonment in the county jail for not more than 90 days. (Similar penalties exist for violations of Public Act 189 of 1931, the Insect Pest and Plant Disease Act.) It has been recommended that penalties for violations of quarantines be increased.

THE CONTENT OF THE BILL:

House Bill 4560 (MCL 286.259 and 286.260)

The bill would amend Public Act 72 of 1945, which provides the Department of Agriculture with the authority to prevent the spread of insect pests and contagious plant diseases in the state, to impose certain penalties for violating a departmental rule or order issued under the act requiring the destruction of plants or establishing a quarantine area.

| Violation | Fine | Imprisonment |
|------------------------------------------------------------------------------------------|----------------------------------------------------------------|---------------------|
| Violate rule or order requiring the destruction of plants (civil infraction) | Up to \$1,000 + MDA expenses | None |
| Violate a quarantine rule or order (civil infraction) | \$1,000 - \$10,000. Up to \$500 if voluntarily reported to MDA | None |
| Knowingly violate a quarantine rule or order (misdemeanor) | \$1,000 - \$10,000 | Up to 1 year |
| Intentionally violate a quarantine rule or order with purpose of causing damage (felony) | Up to \$250,000 | Up to 5 years |

In addition, a person who violates a quarantine rule or order would also be liable for any damages to plants, natural resources, or agricultural, silvicultural, or horticultural products.

House Bill 4567 (MCL 777.12m)

House Bill 4567 would amend the sentencing guidelines contained in Chapter XVII of the Code of Criminal Procedure to specify that an intentional violation of a quarantine or a permit relating to an insect pest or plant disease for which a quarantine has been issued

(as specified in HB 4562) and an intentional violation of a quarantine rule or order (as specified in HB 4560) would both be a Class E felony against the public order punishable by a maximum prison sentence of five years.

House Bill 4562 (MCL 286.228 and 286.229)

The Insect Pest and Plant Disease Act (Public Act 189 of 1931) regulates the sale and distribution of nursery stock, plants, and plant products in the state and provides the Department of Agriculture with the authority to prevent the introduction and spread of any insect pests and plant diseases within the state. The bill would establish penalties for certain violations of the act.

| Violation | Fine | Imprisonment |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|---------------------|
| Failing to eradicate nuisance plants, if licensed under the act (administrative fine); MCL 286.220 | Up to \$1,000 + MDA expenses | None |
| Failing to eradicate nuisance plants, if not licensed under the act (civil infraction); MCL 286.220 | Up to \$1,000+MDA expenses | None |
| Failing to obtain/comply with permit relating to plant subject to a quarantine, if licensed under the act (administrative fine); MCL 286.218 | \$1,000 - \$10,000. Up to \$500 if voluntarily reported to MDA | None |
| Failing to obtain/comply with permit relating to plant subject to a quarantine, if not licensed under the act (civil infraction); MCL 286.218 | \$1,000 - \$10,000. Up to \$500 if voluntarily reported to MDA | None |
| Knowingly failing to obtain/comply with permit relating to plant subject to a quarantine (misdemeanor) MCL 286.218 | \$1,000 - \$10,000 | Up to 1 year |
| Intentionally failing to obtain/comply with permit relating to plant subject to a quarantine with purpose of causing damage (felony); MCL 286.218 | Up to \$250,000 | Up to 5 years |
| Failing to comply with quarantine; MCL 286.223 | \$1,000 - \$10,000. Up to \$500 if voluntarily reported to MDA | None |
| Knowingly failing to comply with quarantine (misdemeanor); MCL 286.223 | \$1,000 - \$10,000 | Up to 1 year |
| Intentionally failing to comply with quarantine with purpose of causing damage (felony); MCL 286.223 | Up to \$250,000 | Up to 5 years |

In addition, a person who commits a violation would also be liable for any damages to plants, natural resources, or agricultural, silvicultural, or horticultural products.

House Bill 4613 (MCL 600.8801)

The bill would amend the Revised Judicature Act to specify that, for the purposes of issuing state civil infractions, a "law enforcement officer" would include an officer, employee, or agent of the Department of Agriculture acting pursuant to a statute, rule or order administered or issued by the department or the department's director.

FISCAL INFORMATION:

The following table shows how the revenues and costs associated with various penalties would affect the state and local units of government.

| Responsible for/Guilty of: | Fine | Court-ordered Costs ("Minimum State Costs") | Costs of Incarceration | Costs of probation supervision |
|-----------------------------------|------------------|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| State Civil Infraction | To local library | \$10 to state Justice system fund | Not applicable | Not applicable |
| Misdemeanor | To local library | \$40 to state Justice System Fund | County jail; costs vary by county | Local |
| Felony | To local library | \$60 to state Justice System Fund | Can be sentenced to jail or state prison. State prison: average appropriated FY 2004-05 cost of approximately \$29,000 per prisoner per year. Actual cost varies by location and security level. | State. Average FY 2004-05 cost of about \$5.42 per probationer per day, or \$1,977 annually. |

ARGUMENTS:**For:**

House Bills 4560, 4562, and 4567 increase the penalties for violating a quarantine issued by the Department of Agriculture to stem the spread of an exotic pest or plant disease. The recent introduction of the Emerald Ash Borer into Michigan has proven to be devastating – biologically, aesthetically, and financially. The state has already destroyed several million ash trees, and the costs related to eradicating the EAB, whether incurred by the state, municipalities, businesses, or property owners, have been quite expensive. The costs borne by individual property owners to remove their ash trees can be in the thousands of dollars, which can be onerous. The costs to nurseries can be upwards of \$1 million due to lost sales and the destruction of nursery stock, leaving many nursery owners in precarious financial situations. Moreover, the state has already spent several million dollars to eradicate the EAB.

The artificial spread of EAB into outlying areas of the state has been the result of violations of the existing quarantine restrictions. When an individual knowingly violates a quarantine issued by the Department of Agriculture, there is great potential for the EAB to spread into those outlying areas, further hindering the state's eradication efforts and jeopardizing the state's ash tree population. Given the seriousness of the situation, the penalties currently imposed under Public Act 72 of 1945 and Public Act 189 of 1931 are woefully inadequate. The bills increase the penalties in a manner that is consistent with the severity of the violation.

For:

House Bill 4613 clarifies that the Department of Agriculture has the authority to issue state civil infractions. House Bills 4560 and 4562 add that certain violations would be considered state civil infractions.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.